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EMMANUEL GOLDSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNIVERSAL CITY STUDIOS, INC.,
PARAMOUNT PICTURES CORPORATION,.
METRO-GOLDWYN-MAYER STUDIOS INC.,   00 Civ. 0277 (LAK)
TRISTAR PICTURES, INC., COLUMBIA
PICTURES INDUSTRIES, INC., TIME WARNER   DECLARATION OF CHRIS
ENTERTAINMENT CO., L.P., DISNEY   DiBONA IN OPPOSITION TO
ENTERPRISES, INC., and TWENTIETH   PLAINTIFFS' MOTION TO
CENTURY FOX FILM CORPORATION,   MODIFY THE PRELIMINARY
                                         INJUNCTION AND IN
                    Plaintiffs,   SUPPORT OF DEFENDANTS'
                                         CROSS- MOTION TO
          - against -   VACATE THE PRELIMINARY
                                         INJUNCTION
SHAWN C. REIMERDES, ERIC CORLEY a/k/a
"EMMANUEL GOLDSTEIN" and ROMAN
KAZAN,

                    Defendants

---X

I, CHRIS DiBONA, declare under penalty of perjury that the foregoing is true and

correct:

1.   I am presently employed by VA Linux Systems, Inc. ("VA Linux"), which is the

country's leading company providing hardware and software products for Linux users and

Internet Infrastructure companies. A copy of my Resume is attached hereto as Exhibit A.

FGKS: 107118.5 05/02/00   11560.00200
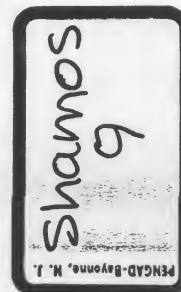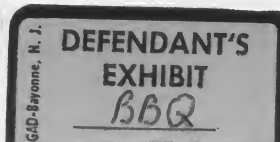
2.   Linux is an operating system designed from the ground up to be distributed in an open manner. One of the things that makes Linux different from other commercial offerings is the fact that it is not owned by any one person, organization or company. Developed over the last decade over the internet, Linux was released under the GNU General Public License ("GPL"). The GPL license provides that anyone can use Linux, but they must promise to make any program derived from or based on the Linux source code open and freely available in its turn, so as to promote the spread of the Linux and similar software. By it's very nature, Linux is an open system.

3.   During the early development of Linux, it was very rare for a manufacturer of a device (say a DVD player, printer, video or sound card) to provide specifications or even technical help to the people who wanted that same device to work with Linux. Commonly, a programmer would reverse engineer the device to ensure that device worked under Linux.

4.   I have very closely followed the efforts of various individuals and/or groups to develop a DVD player for machines using the Linux operating system (as well as for other open-source operating systems), including those of the international LiVid group. I have also followed with great attention the related efforts by some individuals and/or groups to "crack" the CSS code that encrypts the data on DVDs as part of their endeavor to create an open-source DVD player. Such a step is necessary to enable DVD players not equipped with CSS, such as players for use on Linux and other open source platforms, to read or play commercial DVDs.

5.   I have reviewed this Court's preliminary injunction decision -- which is posted online at a variety of web sites, including a number of web sites on the 2600.com mirror list as posting DeCSS -- and am aware of the Court's apparent belief that DeCSS poses a great risk of copying by "pirates" who could use DeCSS to create innumerable, commercially viable,

infringing digital copies of a DVD movie. Based on my experience, my expertise with the necessary technology, and the investigation described below, it is patently clear to me that this conclusion is factually incorrect. Additionally, the Court's apparent belief that the only reason for DeCSS is for copying is also incorrect. For example, Jon Johansen, the Norwegian 16-year-old who first posted DeCSS and is a member of MoRE ("Masters of Reverse Engineering"), the group that developed the utility, stated in a January 31, 2000 interview reported on CNN.Com: "I got involved with DVD about two years ago. . . . . [a]nd about at the end of September last year, I got in contact with a German Computer programmer and a Dutch computer programmer, and we decided that it was time to add DVD support to Linux -- and, of course, to opther operating systems, such as FreeBSD." A copy of the interview is attached hereto as Exhibit B.

6.   I have no personal knowledge of anyone using DeCSS to view or copy a DVD, except for a single professional demonstration presented by OpenDVD.org at the Atlanta Linux Showcase trade show at which DeCSS was used to play (but not copy) a DVD.

7.   In early April, I was asked by counsel for the defendants in this lawsuit to investigate the use by the Linux community -- and/or anyone else -- of DeCSS in any context, including to view or copy DVDs. Accordingly, in addition to my constant contacts and conversations with members of the Linux community, between April 10th and April 20th I posted general inquiries about DeCSS-related copying to the Linux, other open-source, and "hacker" (in the non-perjorative sense of individuals devoted to exploring the limits of the Internet) communities via a variety of mailing list and websites, including but not limited to the SVLUG and DeCSS mailing lists and the opendvd.org website. These communities are made up of very skilled and technically capable people.

8.   None of the approximately 2000 people who responded to my e-mails and postings reported using DeCSS to make copies of DVDs. Indeed, only two people -- both of whom insisted on strict anonymity as a condition of speaking with me because they feared reprisal from the MPAA -- said that they were able to use DeCSS to view DVDs they had purchased. However, both reported significant problems with playback. One experienced distorted video and both experienced stuttering sound. It's also worth noting that the individual who called the video "high quality" (although with bad sound) used a very expensive dual processing computer equipped with a great deal of random access memory.

9.   There are several explanations for the results obtained by these isolated experiments. First, it is technically quite complicated to use DeCSS to copy DVDs. Starting with the DVD player, you'd need to acquire and make use of the DeCSS utility. Additionally, some sort of MPEG decoding utility would be necessary to view the resulting decoded data. Since the algorithms used by the MPEG display software are especially cpu (the central processing unit or chip that runs a computer) and memory intensive, and because the developers of the DeCSS application were unable to enlist the help of any hardware decoder that may exist on the video card, the resulting video quality is very poor.

10.   Except under a very specific and unusual set of circumstances (I am hypothesizing that such circumstances are possible, since as far as I am aware, it hasn't yet been done), it is also nearly impossible to enjoy a DVD played through DeCSS because of the syncing problems that make movies appear like dubbed martial arts films. When one combines the poor playback quality created by these technical difficulties with the exceptionally large size of the data files, which makes the copying and distribution of decrypted versions of movies from a DVD so costly and complicated as to be unfeasible, it is clear that DeCSS is not a useful tool for the piracy, let

alone viewing, of DVDs.

11.   In order to test the theories and information I had gleaned about the DeCSS program, and to understand the technical aspects of using it, I downloaded DeCSS.exe and installed it on my DVD equipped Laptop. Before executing DeCSS, I tried to copy some of the VOB files off of the DVD of *Air Force One* that was specifically procured for this task. I was unable to copy over the file until after I had run DeCSS on the drive to unlock the data, which confirmed that DeCSS permits one to copy a file off a DVD onto a computer's hard drive. However, the only DVD player program I had on my computer refused to play any of the VOB files I had copied directly off the hard drive (I did not copy all of them because of lack of room on my 18-gB hard drive). I was also unable to find a program under windows that would play the VOB file.

12.   I was able to play the VOB file under Linux using a free utility called "xmovie". (x denotes that this is a movie player for the xwindows system, the windowing environment used by Linux and Unix). My experience was that with some tweaking I was able to watch the VOB file, but that video quality was very poor, showing a lot of stuttering and with a great deal of artifacts, and the sound, while clear enough, was not synchronized with the picture very well. This was the first time I was able to watch even a fragment of a DVD (which I had purchased) using Linux; but it took me hours to accomplish this task, and I used a DVD I already owned and could play on my home player and laptop computer.

13.   Having laboriously used DeCSS to view a fragment of a commercially purchased DVD, my conclusion is that it is not watchable by any degree. Apart from the extensive technical problems I experienced (and others I understand are discussed in other declarations), it is clear that any copies made for sale (i.e., pirated copies) using this system would share all of the

above-described defects.

14.   Accordingly, given the many problems and costs associated with using DeCSS, especially compared to the low price of buying or renting a DVD and the fact that new Windows and Apple computers increasingly provide a DVD player as standard equipment, it is my opinion that the only real commercial value in DeCSS is as part of the reverse engineering of an open-source DVD player and not at all as a tool for commercial piracy. This conclusion is also supported by the fact that none of the 2000 people who responded to my inquiries about DeCSS used the program to copy a DVD.

15.   In fact, DeCSS seems to me to have been created as an exercise in cryptology and the result of intellectual curiosity and experimentation by a handful of extremely sophisticated computer experts. Once open-source DVD players have been established, DeCSS' only value will be as an interesting utility to be examined by academics, scholars, engineers, programmers, cryptologists, and the like.

16.   After some thought, and through my actions working on this debate, I realized that may be in fact possible to copy the VOB files as I described in previous paragraphs, but without using DeCSS at all. I tested my theory on my Laptop, a IBM Thinkpad 600E with a DVD drive installed.

17.   IBM ships the Mediamatics DVD playing program with their DVD drive so that the user can watch DVD's in full screen under Windows. This works flawlessly under Windows. What is interesting is that if you do the following, you can copy data off the Disk, and use the mediamatics program as a DeCSS equivalent.

18.   First, I opened up the same movie and started it playing, then I minimized the window so that my screen was not completely filled by Harrison Ford. Using window's file manager, I then copied two of the VOB files on the Disk to the hard drive. Prior to my playing the movie (and the concommitant unlocking of the DVD Drive by the mediamatics player), I was unable to copy these same VOB files.

19.   After copying one of the files onto my hard drive, I shut down the mediamatics playing program. I discovered that upon the closing of the program the DVD was left unlocked. This

means you can copy the data from the DVD player while it is playing, or you can wait until you are done watching to copy the data. I copied over some more of the VOB files that I had been unable to copy before starting the MediaMatics program. The VOB file that was copied was still scrambled, but it was the data off the DVD drive. Conceivably you could make a bit for bit copy of the DVD in this manner.

20. 14. It should be clear that the DeCSS program by itself is not necessary to get the data files off the DVD. The design of the protocol makes DeCSS redundant for that purpose. If a person is able to play a DVD on a Laptop, then the design of CSS demands that the DVD be unlocked. While a DVD is unlocked, you can copy whatever you want off the DVD. For the case of my laptop and the MediaMadics player I was able to not only copy the VOB file I was currently viewing, I was able to copy all other files. That said, I'd be surprised if this was not the case for the other players. The design of the DVD copy protection is flawed in such a way as to invalidate any assertion that CSS is a copy protection mechanism, since I can use the tools designed for it and licenced by the MPAA/DVD-CCA to copy VOB files.

21. 14. If the DeCSS program is not even needed to circumvent the copy protection on the DVD, DeCSS should be seen as a method of descrambling only, as copy protection is invalidated by the design of the DVD itself. The fact that the files can be removed without DeCSS means that bit-by-bit copies of the DVDs could be made using the necessary equipment. It may even be possible to make a CSS-equipped DVD player run the encrypted VOB files directly off a hard drive without the benefit of any assisting software.

Dated: May 1, 2000
Sunnyvale, California

Christopher James DiBona

1334 Holly Ave

Los Altos, Ca 94024

chris@dibona.com

408-621-7046 (cell) 650-961-6040(home)

OBJECTIVES:

To further the state of the art in programming for the net and to help in the guidance of new technologies to fruition.

WORK EXPERIENCE

November 1998   Ongoing, VA Linux Systems   Sunnyvale, Ca
In Order:
The Marketing Department
The Web Team
Director of Tech Support
On the IPO team (Ran the F&F team which help 1550 participants)
Linux Community Evangelist
Technology Lead on our M&A Team
- I was the 14th Employee of VA Linux systems, as such, I was asked to do a lot of different, very challenging jobs.

June 1998   November 1998, StrongCrpyto LLC.San Francisco, Ca
Chief Architect
- Developed the architecture for a next generation VPN/Crpyography Product. Company failed, was never funded and dissolved.

February 1998 July 1998, SuSE GMBH.   Oakland, Ca
Web Site Redevelopment
- Planned and executing the redevelopment of their web site for internationalization and for streamlined online ordering with a shopping cart application.

July 1996 –March 1998 Tandem Computers   Cupertino, Ca.
Software Developer, Security Technology Products.

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CHRIS@DIBONA.COM

- Was part of the team that created the Tandem Certificate Security Server. Duties included development in C++ under Solaris and NT. In charge of developing the interface between our product and various smart card readers.

1995 - June, 1996 Howrey & Simon   Washington, DC

Electronic Messaging Administrator

- Maintained a multi-platform mail systems consisting of over 60 sites with 1200+ users on many mail platforms, including, but not limited to, MS Mail on the Mac & PC, CC-Mail, SMTP, X.400 and recently, MS Exchange. Helped to develop Howrey's intranet capabilities and assisted in network operations.

1993 - 1995   US Department of State A/IM   Washington, DC

Programmer/Analyst

- Developed prototype applications within the demanding security framework and network environment of the Department. (270+ sites worldwide). I was the NSA trained and certified fortezza crypto-card subject matter expert for the department and was on their firewall implementation team.

1992-1996   Freelance Animator   DC. Metropolitan Area

- Animated flying logos and product demos for Telepad Corporation, as well as for the Capital Management group of companies.

EDUCATION

1993 - 1996   George Mason University   Fairfax, Va.

Bachelors in Computer Science

- To be received 2000. Emphasis on networking protocols & their interactions with different operating system architectures.

1993 - 1996   Northern Virginia Community College   Loudon, Va.

Associates in Computer Science

PROFESSIONAL MEMBERSHIPS

Member in good standing of the Association of Computing Machinery. (ACM) I am the President of the Silicon Valley Linux Users Group. I am the SVLUG's webmaster as well. (http://www.svlug.org) I am the Grant Chair for Linux International's Development fund. I am on the technical board of Ciphony Corporation and Paragon/Digital Education Systems and I am the Linux Conference chair for the O'REilly Open Source Conference, an avisory Chair for YAPC and assist in the Conference planning for LinuxWorld Conference and Expo.

REFERENCES

John Clark, Deputy Assistant Secretary of State for information management, US Department of State.

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CHRIS@DIBONA.COM

Robert SanMartin, Former Chief Scientist, Department of Energy.

Peter Sarros, Analyst, Information Management at the Department, former Ambassador to the Vatican.

Larry Augustin, CEO VA Linux Systems

Other references are available upon request.

PROJECTS, AWARDS AND PUBLICATIONS

I have bene published in all the major Linux press an quoted widely in both trade and mainstream publications including but not limited to USA Today, Time, the New York Times and others. Transcripts and tapes can be made available on request. I have been quoted in Techweek, C|net, BootNet and Wired Daily News.

I co-edited the book "Open Sources: Voices from the Open Source Revolution", published by O'Reilly and associates. This book won the Linux Journal Best New Book award for 1999.

Outside of the computer field, I have been published as a freelance writer for human interest, international security and feature stories. I have reviewed books for Techweek and other print and online publications.

My web-site has garnered recognition in both the national and cyber-press. Garnering mentions in The Net, Internet World, Online access and in a ½ dozen other publications. Also received "Point.coms" oft-given top 5% of the web award, as well as a pair of "Yahoo" sunglasses. It recieves aapproximately between 50,000-60,000 page views a month.

For more information and for online transcripts of publications, visit http://www.dibona.com

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From...
LinuxWorld
Putting Linux to work

AN IDG.net
S I T E

Meet the kid behind the DVD hack

January 31, 2000
Web posted at: 11:03 a.m. EST (1603 GMT)

by J.S. Kelly

(IDG) -- On Monday, January 24, authorities in Norway searched the home of Jon Johansen, a 16-year-old Norwegian member of the Masters of Reverse Engineering (MoRE) -- the group which created the DeCSS DVD playback utility for Linux. Jon and his father Per Johansen have both been indicted by Norway's Department of Economic Crime.

LinuxWorld talked to Jon about DeCSS, the investigation, the controversy -- and about why he feels that this case is at the same time so ridiculous and so important.

LinuxWorld: How did this whole thing start? How did you get involved with DVD and DeCSS?

Jon Johansen: Well, I got involved with DVD about two years ago. I bought my first DVD-ROM and an MPEG-2 decoder card. And, about at the end of September last year, I got in contact with a German computer programmer and a Dutch computer programmer, and we decided that it was time to add DVD support to Linux -- and, of course, to other operating systems, such as FreeBSD.

LinuxWorld: Had you expected any problems like this when you set about to make the player?

MESSAGE BOARD
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Jon Johansen: We knew that they would probably go after someone. But when [Norwegian authorities] visited me yesterday with a search

warrant, I really hadn't expected them to, because it's been about two or three months now since [the subject] first appeared in the media and, well, to me, that's a pretty long time.

LinuxWorld: You removed the code from your Webpages when they asked you to, and have been cooperating with what they have asked of you, is that right?

Jon Johansen: Actually, I was only linking [to the source code] and they wanted me to remove the link -- which I did, so that I could think it over. And then the link appeared again on my Website at the end of the week.

LinuxWorld: Did they question you at your house?

Jon Johansen: No. They took me to the local police station. But my father was sick, so they questioned him here at home.

LinuxWorld: But they just took you in for questioning -- they didn't arrest you or anything like that?

Jon Johansen: Well, the biggest Norwegian newspaper regarded this as an arrest, since they hadn't told us that they were coming and they brought me in. So the biggest Norwegian newspaper looked upon that as an arrest.

LinuxWorld: But did they give you a choice to not go in for questioning?

Jon Johansen: Well, of course I do have the right to have an attorney present. So I [could have] told them that I did not want to do it without an attorney, [and] they would have had to call my attorney and schedule an appointment.

LinuxWorld: And you didn't do that.

Jon Johansen: No, I didn't do that.

LinuxWorld: Why?

Jon Johansen: Basically, because I didn't have anything to hide. So I decided to cooperate.

LinuxWorld: The code that you wrote -- now, is it called DeCSS or is it CSS-auth?

Jon Johansen: It's called DeCSS.

LinuxWorld: OK. Because I've seen conflicting media reports on that, and other things. Like, some say that you are 15, others say you are 16.

Jon Johansen: I'm 16 now, I was 15 when it happened ... and the encryption code wasn't in fact written by me, but written by the German member. There seems to be a bit of confusion about that part.

LinuxWorld: The other two people that you had worked with to make the player are remaining anonymous -- is that right?

Jon Johansen: Yes, that is correct.

LinuxWorld: Do you think they will try to find out who they are from the data on your computer?

Jon Johansen: Yes, probably. They also asked what I knew about them. But I don't have the identity of any of them. I only had the nicks that they used on Internet Relay Chat.

LinuxWorld: And did you give those up?

Jon Johansen: Well, lately they have been changing nicks from time to time. So I gave one of the nicks they had used before.

LinuxWorld: Do you know why they want to remain anonymous?

Jon Johansen: They are both a lot older than me, and they are employed. So I guess they just didn't want the publicity, and they were perhaps afraid of getting fired.

LinuxWorld: And why is your father involved in this?

Jon Johansen: Basically because he owns the domain [at which] my Webpages were located.

LinuxWorld: And how do your parents feel about this whole thing?

Jon Johansen: They consider it [to be] just as stupid as I do. The charge is totally off-topic. It doesn't have anything to do with reality.

LinuxWorld: Do you know why they took your cell phone?

Jon Johansen: I asked them why, and they said that they considered it to be so advanced that they had to take it in, because it was a Nokia 91-10. And I did have, in fact, a backup of the source on it.

LinuxWorld: And do you know what is going to happen next?

Jon Johansen: They are currently investigating, and I still haven't received my computers back. So I have ordered a new one today, which I will be receiving on Friday. Which is a bit too late, because ABC News is coming tomorrow, and I was supposed to demonstrate DVD playback under Linux. So I'm going to call some people now and try to get hold of a computer with a DVD-ROM and get Linux installed on it.

LinuxWorld: So, can DeCSS in fact in any way be used for pirating? I mean, I realize that isn't the purpose for which it was written.

Jon Johansen: Well, yes, it can be used for pirating. Because you can decrypt a DVD disk and put it on your hard drive and then you can convert it, say, to VCD and then post it on the Internet. But tools to do that had already been available on the Internet, long before DeCSS, which was also a complete digital solution which gave you the same quality. So DeCSS didn't introduce anything new for pirating and had already been available.

LinuxWorld: So why do you think they are going after you, and not the authors of the other tools?

Jon Johansen: Well, the authors of the other tools are, as far as I know, anonymous. And [in] the charge, they say that the encryption is copy protection. But that's not correct at all. Anyone with a little computer experience knows that anything can be copied bit-by-bit with the right equipment.

LinuxWorld: And the authors of the other tools didn't break the encryption? Those previous tools had been written for the Windows platform, is that right?

Jon Johansen: Yes. There was one tool, I think it was called DVD-rip, which I believe actually hacked in to the Xing DVD player and then, when the Xing DVD player had decrypted the MPEG stream, the DVD-rip utility dumped that stream to disk and you had yourself an unencrypted DVD movie.

LinuxWorld: Well, it seems then all the more that they should be going after those other authors.

Jon Johansen: I guess it is because those other tools haven't received any media attention. But perhaps they don't even know about them --

but I would think that they do, because they are not that stupid.

LinuxWorld: Why did you decide to come forward and to not to remain anonymous?

Jon Johansen: We discussed it in the group and they thought it was OK, and I think the first reporter I talked to was from Wired. I think it was Declan [McCullugh], and he asked me if he could publish my name, and since we had already talked it over in MoRE, I said yes.

LinuxWorld: Are you sorry now that you did?

Jon Johansen: Not really, because I think the fight we are now fighting is a very important fight for free speech and for the open source community.

LinuxWorld: Why is it so important?

Jon Johansen: Basically, if reverse engineering is banned, then a lot of the open source community is doomed to fail. Because [you need to reverse-engineer] when creating software for compatibility with, for example, Microsoft Windows. For example, Samba was totally dependant on reverse engineering. Of course, the whole computer industry was allowed to reverse-engineer IBM's BIOS.

LinuxWorld: What was your reaction to the injunctions in the US?

Jon Johansen: I was a bit surprised, but then I read about how EFF [the Electronic Frontier Foundation] had presented the defense. And, if what I read on Slashdot about that was true, then I don't understand how exactly EFF could have argued that way.

LinuxWorld: Why?

Jon Johansen: Well, what I read on Slashdot was that they basically said that the encryption was bad, and it was kind of their fault. And I don't understand why they used those arguments.

LinuxWorld: What kind of arguments would you have expected, or what kind of arguments do you think might have been better?

Jon Johansen: I would have expected for them to try to explain to the court that this had nothing to do with copying, because encryption does not prevent copying -- which the DVD CCA [Copy Control Association] and MPAA are claiming. And everybody knows that even if something is encrypted you can still copy it if the reading of the data goes through decryption.

LinuxWorld: At the hearing I attended, the defense did argue that the

DVD encryption was flawed. At the same hearing, the plaintiffs had some really, some pretty strong feelings about the way people have been acting when they repost the code. Do you know about that?

Jon Johansen: I did actually read on Slashdot where the plaintiffs had actually read from Slashdot debates.

LinuxWorld: Exactly. And they picked out only the ones which were saying things like "fuck the law." And so they picked those out on purpose and they said, "Look at these people. They don't want to play back movies. They are saying 'fuck the law.'" So do you have anything to say to people about that?

Jon Johansen: Well, that's really sad that they can't behave, because they should have known that the plaintiffs would have used something like that against us. They should stop doing things like that and help inform the media that this has nothing to do with copying but [rather has to do with] with playback.

LinuxWorld: How best can people help to do that?

Jon Johansen: Well, first of all they could head over to OpenDVD.org, and see what's written there, and then perhaps call or email their local media, and inform them about the case.

LinuxWorld: Thanks, Jon, for talking to us. We wish you the best of luck.

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(*The Industry Standard*)
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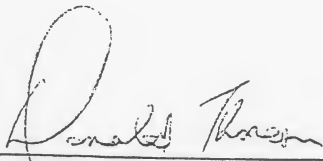   :

COUNTY OF NEW YORK)

DONALD THORESEN, being duly sworn, deposes and says:

I am not a party to this action, am over eighteen years of age, and reside in Kings County, New York.

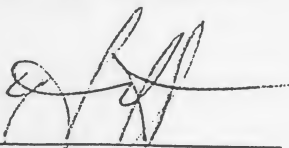On May 2, 2000, I personally served the annexed declaration upon:

> Leon Gold, Esq.
> Proskauer Rose LLP
> 1585 Broadway
> New York, New York 10036

by hand delivering a true copy of same to, and leaving it with, an employee of the above-named firm.

_____
Donald Thoresen

Sworn to before me this
2nd day of May, 2000.

_____
Notary Public